


MEMORANDUM
OFFICE OF THE HAYWARD CITY ATTORNEY

TO: Planning Commission

FROM: Penny Nakatsu, Assistant City Attorney 

DATE: May 11, 2000

SUBJECT: May 18, 2000 Work Session on Group Homes

The following materials will be discussed in the work session on group homes, which will be held on May 18, 2000 at 6:30 p.m.

- ▶ September 29, 1999 Memorandum from Deputy Director Martha Lopez of the State of California, Community Care Licensing Division on *Commitment to Work with Local Government on Group Home Issues*,
- ▶ Summary of 2000 Group Home Bills
- ▶ Assembly Bill No. 2641 (Calderon) as of May 2, 2000
- ▶ Summary of 1998-1999 Group Home Legislation
- ▶ January 26, 1998 Memorandum to San Jose City Council on San Jose's Group Home Ordinance

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STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY

GRAY DAVIS, Governor

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



September 29, 1999

TO: REGIONAL MANAGERS
RESIDENTIAL DISTRICT OFFICE MANAGERS

FROM:  MARTHA LOPEZ, Deputy Director
Community Care Licensing Division

SUBJECT: COMMITMENT TO WORK WITH LOCAL GOVERNMENT ON GROUP
HOME ISSUES

Over the past several years, a number of bills have been introduced in the legislature to address such issues as overconcentration of group homes, their impact on law enforcement and other local government services and how group home complaints are handled. In 1997, AB 323 (Chapter 562, Statutes of 1997) created a pilot project to encourage Group Homes to work with neighborhood residents to resolve issues and to reduce the number of complaints about Group Homes. The legislation specifically required the pilot in San Bernardino County until 2001. The Community Care Licensing Division expanded the pilot to include Shasta County as well.

The pilot sites have found a significant reduction in group home complaints since the pilot was implemented. Each office is maintaining a separate log of group home complaints for the duration of the pilot. A primary factor in the success of the pilots to date is the coordination between the local licensing office and local law enforcement and other local government entities. This has been especially significant in Shasta County. A Task Force meets regularly to ensure ongoing communication and collaboration on issues.

Efforts such as this provide an excellent forum for resolving local issues at the local level. I am committed to expanding this model to other areas to foster communication and cooperation among group home providers, local law enforcement, placement agencies and the community. It is my intent that local licensing offices convene interdisciplinary task forces if such a group is requested by the local community.

Upon receiving a request from the local community, the District Manager should contact, at a minimum, local police, sheriff, county children's protective services, mental health, and probation to determine their interest in participating as well as representatives from local group homes or their associations. The District Manager should convene and facilitate the first meeting. Each group will decide the frequency and protocol for further meetings. Each group should be tailored to fit local needs and address local issues.

The San Bernardino and Chico district offices have experience with this sort of effort. Please contact those offices for additional information about effective procedures.

2000 Group Home Bills

AB 2641 (Calderon) Residential Care facilities: Local Need

This bill is the intended vehicle for recommendations from the League's legislative task force on group homes. As drafted, this bill is currently a "spot bill" to change the Legislature's policy on residential care facilities. The new policy would be to authorize each city and county to determine for itself the sufficient number and types of residential care facilities to meet local need.

SB 1901 (Morrow) Sober Living Homes: Local Certification: Requires a court, probation department, the Department of Corrections, or the Department of the Youth Authority only to order or arrange for placement, or refer, persons under the jurisdiction of the court or the respective departments to a sober living home, as defined, that is certified as provided under the bill. To become certified, the bill would require a sober living home to provide certain information to the local law enforcement agency having jurisdiction in the area where the home is located. The bill would require local law enforcement agencies to compile a list of sober living homes that have met the certification requirements. The bill would set forth circumstances under which a sober living home may be decertified, including as a result of successful local nuisance abatement procedures.

SB 987 (Karnette) Adult Recovery Maintenance Facilities: Licensing Requires the State Department of Alcohol and Drug Programs to administer the licensure and regulation of adult recovery maintenance facilities.

"Adult recovery maintenance facility" is defined as any facility, place, or building that provides alcohol- or drug-free housing whose rules, peer-led groups, staff activities, or other structured operations are directed toward maintenance of sobriety for adults in early recovery from substance abuse or who recently have completed alcoholism or drug abuse recovery or treatment services who may be required by the licensee to receive those treatment services at another facility. This facility is designed to promote independent living in a supervised setting, but does not require staff onsite on a 24-hour-a-day basis, and does not provide professional recovery and treatment services onsite.

Exempts sober living homes from licensing requirements. "Sober living homes" is defined as homes that provide room or board, or both, and that require residents to abstain from using alcohol or illicit drugs but do not provide or require participation in any recovery maintenance activities as a condition of their residency.

AB 812 (Machado) Host County: Denial of New Group Homes

Provides a host county the authority to deny the establishment of a rate [payment for services] for a new or expanded program serving Section 602 wards in a foster care group home, except as provided, based upon: (1) the

host county be required to provide in-county or contiguous county placement for at least 60 percent of its adjudicated Section 602 wards and (2) the host county has at least 10 percent more Section 602 wards placed within the county than Section 602 wards the county adjudicates.

AB 2618 (Rod Pacheco) Spot bill.

AB 1815 (Maddox) Parolees: Placement Near Schools Existing law provides that any inmate who is released on parole for specified sex offenses shall not be placed within 1/4 mile of any school that includes any or all of grades kindergarten to 6, inclusive. This bill would specify that for the purposes of the provision, "1/4 mile of any school" means 1/4 mile from the perimeter of any school.

AB 2011 (Wayne) Family Day Care Homes: Unannounced Visits Requires the Department of Social Services, regardless of funding, to conduct an unannounced visit of all licensed family day care homes every 2 years and as necessary to ensure family day care homes comply with the law.

Related Bills:

AB 2012 (Shelly) Imposes specified requirements on providers of out-of-home foster care, with respect to supporting the educational needs of the children in their care. The bill would also require a county child welfare services worker, probation officer, or mental health worker to provide an out-of-home care provider with each child's health and education passport, and would require the provider to maintain and update the passport with specified relevant educational information.

AB 2278 (Aroner) Requires the Department of Alcohol and Drug Programs to give priority in alcohol and drug treatment programs to children or to parents of children who are vulnerable to abuse or who are in foster care, and would require the Children and Family Division of the State Department of Social Services to ensure that alcohol and drug treatment programs are integrated into foster care programs. Requires an assessment on the impact of substance abuse on foster care and efforts to integrate substance abuse treatment into foster care to be delivered to the Legislature by January 1, 2003.

SB 1579 (Alpert) Requires the State Department of Social Services to establish a 3-year pilot program in the Counties of Sacramento and San Diego, to initiate and operate Early Start to Emancipation programs for foster youth between the ages of 14 and 15, in those counties, subject to the counties' consent.

SB 1869 (Ortiz) Prohibits a small family home from being denied a fire clearance because of a failure to comply with any state fire safety requirements and related building standards enforced by a local fire enforcing authority that are not required of a family dwelling.

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AMENDMENTS TO ASSEMBLY BILL NO. 2641

Amendment 1

In line 1 of the title, strike out "1566 of" and insert:

1520.5 of, and to add Section 1538.3 to,

Amendment 2

On page 1, strike out line 1 and insert:

SECTION 1. Section 1520.5 of the Health and Safety Code is amended to read:

1520.5. (a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of residential care facilities which impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new residential care facility license if the director determines that the location is in a proximity to an existing residential care facility that would result in overconcentration.

(b) As used in this section, "overconcentration" means that if a new license is issued, there will be residential care facilities which are separated by a distance of 300 feet or less, as measured from any point upon the outside walls of the structures housing those facilities. Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet with the approval of the city or county in which the proposed facility will be located.

(c) At least 45 days prior to approving any application for a new residential care facility, the director, or county licensing agency, shall notify, in writing, the city or county planning authority in which the facility will be located, of the proposed location of the facility.

(d) (1) Any city or county may request denial of the license applied for on the basis of overconcentration of residential care facilities.

(2) A city or county may submit to the director additional documentation and evidence regarding the siting of a proposed facility designed for six or fewer residents. The documentation may include, but is not limited to, a listing of other state-licensed residential facilities, unlicensed residential facilities, or other uses located in the immediate vicinity of the proposed site.

(3) The director shall investigate, review, and consider

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(1) any information submitted by the city or county pursuant to paragraph (2), in order to determine whether issuance of the license would result in either the siting of the proposed residential care facility in the immediate vicinity of other uses that are not compatible with the proposed facility or a significant cumulative impact that imposes a unique burden on the neighborhood in which the proposed facility is to be located.

(4) The director may deny an application, and request the applicant to consider alternate siting locations, if he or she finds that the siting of the residential care facility at the proposed location is not appropriate due to the existence of circumstances described in paragraph (1) or (3). If, after investigation, review, and consideration of documentation or evidence submitted pursuant to paragraph (2), the director approves the siting of the proposed facility, the approval shall include written findings in the public record regarding how that decision meets the requirements of this subdivision.

(5) This subdivision shall not be interpreted to authorize or require the director to take an action that would violate the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 and following).

(e) Nothing in this section authorizes the director, on the basis of overconcentration, to refuse to grant a license upon a change of ownership of an existing residential care facility where there is no change in the location of the facility.

(f) Foster family homes and residential care facilities for the elderly shall not be considered in determining overconcentration of residential care facilities, and license applications for those facilities shall not be denied upon the basis of overconcentration.

(g) Any transitional shelter care facility as defined in paragraph (11) of subdivision (a) of Section 1502 shall not be considered in determining overconcentration of residential care facilities, and license applications for those facilities shall not be denied upon the basis of overconcentration.

SEC. 2. Section 1538.3 is added to the Health and Safety Code, to read:

1538.3. When a local law enforcement agency investigates a complaint at a residential facility licensed pursuant to this code, the facility shall inform the law enforcement agency which state agency is responsible for licensing the facility. The local law enforcement agency shall file a copy of the incident report on the residential facility with that state agency.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

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reimbursement does not exceed one million dollars (\$1,000,000),
reimbursement shall be made from the State Mandates Claims Fund.

Amendment 3

On page 1, strike out lines 2 to 5, inclusive, and strike
out page 2

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98-99 Group Home Legislation

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1999 Legislation

Vetoed:

SB 887 (Ortiz) Strengthen laws associated with group home operator fraud.

Status: Vetoed by Governor Davis due to fiscal issues.

SB 986 (Karnette) Requires sober living facilities which offer services and programs to residents to be state licensed.

Status: Vetoed by Governor Davis due to fiscal issues.

Two-Year Bills:

AB 373 (Baugh) extends separation requirement from 300 to 1,000 feet.

Status: Gutted. Converted to a bill related to the Lanterman Developmental Center. Two-year bill.

→ **AB 533 (Nakano)** Spot bill. Relating to placement of juvenile wards of the court in various homes and care facilities. The author has recently drafted amendments to clarify that an operator cannot claim the six-or-fewer exemption if he/she is operating two or more facilities within 1,000 feet of each other.

Status: Never heard in committee. Two-year bill.

→ **AB 997 (Campbell) (League Sponsored)** Addresses issue from "good neighbor/licensing" perspective. Prohibits additional licenses from being granted to providers who have not operated their facilities well in existing communities. Adds some language to strengthen the role of group home community advisory bodies established by last year's SB 933.

Status: Two-year bill Assembly Human Services Committee.

AB 1025 (Havice) Makes some slight changes designed to strengthen the role of group home community advisory bodies established by last year's SB 933.

Status: Two-year bill Assembly Human Services Committee.

SB 268 (Rainey) Requires that residential care facilities for the elderly also be counted for purposes of the 300-foot separation requirement.

2) States legislative intent that a group home have the following community members as either members of its existing board of directors, or as a separate advisory body that meets at least annually:

- o Neighbors of the facility.
- o Members of the community in which the facility is located.
- o A representative of local law enforcement or other city or county representative.
- o Current or former clients of the facility.

(To clarify the many other changes related to group home operations, a copy of the detailed Legislative Committee analysis is attached..)

Background Checks: Health and Community Care Facilities: AB 1068 (Campbell), Chapter 898, Statutes of 1998. For facilities licensed by the Department of Social Services, this bill deletes the existing exemption from criminal background checks for certain employees of social rehabilitation facilities. In addition, the bill requires the department to take evidence of good character and rehabilitation into account when considering whether or not to deny, suspend, or revoke a home health aide certificate. For facilities licensed by the Department of Health Services, this bill extends the existing criminal record background check requirements at intermediate care facilities for the developmentally disabled -- which currently apply only to the operators and managers -- to also apply to direct care staff and persons employed as consultants at these facilities, and makes other related changes.

CITY OF SAN JOSE - MEMORANDUM

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: James R. Derryberry

SUBJECT: GROUP HOME ORDINANCE

DATE: January 26, 1998

APPROVED: 

DATE: 1/27/98

Council District: Citywide

RECOMMENDATION

1. Adopt the proposed Group Home Ordinance as currently proposed by staff.
2. Direct the City Administration and the City Attorney to work with the County Administration and the District Attorney's Office to develop a program to certify all Residential Service Facilities in the City which are not State-licensed and do not already have County certification.

BACKGROUND

This report consists of this Council memorandum outlining the recommendations of the City Administration, together with the attached Background Report providing a more comprehensive description of the extensive public discussion, staff research and analysis which occurred over more than one and a half years since the Group Home Ordinance was initiated.

In February, 1995, in response to the R-1 Task Force Report, the City Council directed the City Attorney's Office to draft amendments to the Municipal Code to bring the Zoning Code into compliance with federal and state legislation which requires that local zoning regulations not discriminate against persons with disabilities in the provision of housing while preserving the integrity of single family neighborhoods. In August, 1996, the City Council initiated the amendments to the Zoning Code to implement this direction.

Since the initiation, the proposed ordinance referred to as the "Group Home Ordinance" has received unprecedented public review, including discussion by the Planning Commission, Housing Advisory Commission, Disability Advisory Commission, Senior Citizens Commission and the County Board of Supervisors. In addition, a plethora of community meetings were held to explain and discuss the proposal. Moreover, Planning staff and the City Attorneys Office have met with numerous interested parties

to receive comment and discuss concerns. Section 2 of the Background Report provides a description of this public input process.

I. THE ORDINANCE WHICH IS NOW BEING RECOMMENDED

Since its introduction the draft ordinance has undergone a number of modifications and clarifications. The key elements of the proposed ordinance as currently recommended by the Department of Planning, Building and Code Enforcement and the City Attorney's Office are:

Guests as an incidental use

The current Zoning Code allows a single family to rent rooms to three guests as an incidental use. This provision makes code enforcement difficult. The proposed ordinance continues to allow three guests as an incidental use, but only when the household, including all guests, is six or fewer total residents.

Guesthouses and Large Guesthouses

A Guesthouse or Large Guesthouse, sometimes called a boarding house, is a residential use where guests stay a minimum of 30 days at a time. The proposed ordinance reduces the maximum number of guests allowed in a Guesthouse, as distinguished from a Large Guesthouse, from 12 to 10. The reason for this change is that the Building Code has different standards for occupancies by more than 10 persons than for those with ten or fewer. We believe that it would make more sense to use ten as the demarcation for Large Guesthouses for zoning purposes as well.

A Guesthouse is allowed pursuant to a Conditional Use Permit in R-3 and R-4 zoning districts. A Large Guest House is allowed under a Conditional Use Permit only in an R-4 zoning district. The ordinance clarifies that no meals or services can be provided to nonresidents and that the rooms may not have cooking facilities.

Residential Care Facilities and Residential Service Facilities

A Residential Care Facility is an establishment, which provides housing and services to its residents under a state license. A Residential Service Facility is an establishment, which provides its residents housing and services which *do not require a license from the state*. As before, all residential care facilities for six or fewer residents are permitted uses in all residential zoning districts. Under the ordinance, all residential service facilities for six or fewer residents are also permitted uses in all residential zoning districts. The prohibition on residential service facilities for six or fewer residents has not been enforced since the R-1 Task Force report was received by Council. This provision merely codifies that

change.

Larger residential care facilities and service facilities (seven or more residents) continue to be allowed pursuant to a Conditional Use Permit (CUP) in R-3, R-4 and Commercial zones

The ordinance makes explicit the current law that no residential use which includes the provision of services to residents may offer services to nonresidents.

Referral Facility

This category is no longer being recommended. (See discussion in the Background Report)

Single Housekeeping Unit

A "Single Housekeeping Unit" is defined as "the functional equivalent of a traditional family; whose members are a nontransient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas, and sharing household activities and responsibilities such as meals, chores and expenses." This is a new definition added for purposes of clarification. It is not a change in the law.

Reasonable Accommodation

The Fair Housing Act Amendments require local government to make reasonable accommodation for the needs of persons with disabilities in the application of its regulations. The ordinance establishes a process for making and deciding on requests for reasonable accommodation under the Zoning Code. The key provisions are :

1. Any person with a disability who finds that any aspect of the Zoning Code, not just group homes, acts as a barrier requiring reasonable accommodation may apply, by using this process, to the Director of Planning. The request may be made as part of some other planning application or approval, then the request for reasonable accommodation will be provided in the same manner as that required for the planning procedure.
2. Notice of a request for accommodation will be mailed to all adjacent property owners. Anyone will be allowed to provide information with respect to the determination.
3. The following factors will be used to determine whether to grant a reasonable accommodation:

- a. Special needs created by the disability;
 - b. Potential benefit to the residents that can be accommodated by the requested modification;
 - c. Potential impact on surrounding uses;
 - d. Physical attributes of the property and structures;
 - e. Alternative accommodations which may provide an equivalent level of benefit to the applicant;
 - f. In the case of a determination involving a single family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.
4. The Director of Planning will issue a written decision granting or denying the request. The Director's decision can be appealed to the Planning Commission, which will hold a public hearing on any appeal. The Planning Commission's decision will be final.

Determining whether a requested accommodation is reasonable involves a balancing of the needs of the community and the party requesting accommodation. The Director or Commission can consider concern for the character of the neighborhood as a legitimate government interest, however, this ground cannot be a pretext for discriminatory action. Moreover, if a proposed accommodation is denied, the City bears the burden of demonstrating that the proposed accommodation is unreasonable.

Fraternities, Sororities and Dormitories

Currently, fraternities, sororities and dormitories are permitted uses in the R-3-F and R-4 Zoning Districts. This is in contrast to the Code requirement of a Conditional Use Permit for Residential Care and Residential Service Facilities (for seven or more residents) and Guest Houses. It is necessary to require the same permits for these uses as we require for residential care and service facilities. Therefore the recommendation is that all of these uses be required to have Conditional Use Permits.

Technical ordinance revision - one dwelling unit per R-1 lot

This is a technical revision, not related to the Group Home issue, to clarify that only one single family dwelling unit is allowed per lot in the R-1 zones.

Note: The full text of the proposed ordinance is included in the Background Report.

II. REVIEW BY VARIOUS BODIES

The Planning Commission, the Disabled Advisory Commission, the Housing Advisory Commission, and Senior Citizens Commission as well as the County Board of Supervisors all held meetings and public hearings regarding the ordinance. Section 2 of the attached Background Report provides additional information regarding the public input process which occurred regarding the ordinance, including copies of the correspondence from the Disability and Housing Advisory Commissions, the Senior Citizens Commission, and the Board of Supervisors.

III. REFERRAL FACILITIES

The County Drug and Alcohol Certification Program has recently established standards for the operation of residential treatment facilities and Sober Living Environments to which the County refers clients, outside the County Managed Care system. City staff is very supportive of the County program and believes that this program should address most concerns about this type of facility.

In addition to referrals through the County, the State Department of Corrections (DOC) operates the parole and work furlough programs, which refer clients into residential programs in the City. The San Jose Parole Office operates outpatient drug and alcohol and homeless programs for which they have contracts for 104 beds in four state-licensed, County-certified programs. The DOC also has two current contracts for six-bed work furlough facilities in San Jose. The Federal Department of Justice Probation Office contracts for a few beds at Pathways for drug and alcohol rehabilitation services. There is presently no Federal half-way house program in Santa Clara County. The Federal Probation work furlough program is located in Mountain View. There are no other state or federal programs that place parolees into residential programs in San Jose. The vast majority of parolees find housing on their own, with friends, relatives or others.

Almost all facilities receiving criminal justice system referrals are covered by the County certification program. This fact, together with the proposed City licensing and certification program, described below, are the reasons why staff is no longer recommending inclusion of the Referral Facility category. See the Background Report for a full discussion of staff's analysis and recommendation to delete the Referral Facility category.

IV. EFFECT OF THE CURRENT PROPOSAL ON EXISTING FACILITIES

Staff analysis of the current compliance of County-certified facilities reveals that many are illegal under both the existing and proposed Zoning Code, primarily because they have more than six residents in facilities located in R-1 and R-2 zones. This ordinance will not change the status of these facilities. These facilities will have the opportunity to

request a reasonable accommodation.

Due to the pending review of the Zoning Code requirements for Group Homes, including the introduction of the reasonable accommodation process, the City has not yet pursued verification of proper zoning compliance of the certified facilities. The County District Attorney's Office has assured City staff that it is their intent to have all facilities retaining County Certification come into full compliance with City zoning and all other requirements.

V. LICENSING PROPOSAL

As a part of the original R-1 Task force recommendations, the City Council directed staff to explore a proposal to establish a licensing program requiring certification of all Residential Service Facilities in the City. However, since the discussion of this issue began, the County, through the District Attorney's Office, has set up a careful certification system for facilities receiving County referrals. The Administration now proposes that the City contract with the County to certify any facilities not already state licensed or included in the County program. In this way, all facilities will be required to meet consistent standards of service to residents and performance in the community.

In conjunction with adoption of the ordinance, staff is recommending the Council direct the City Administration and the City Attorney's Office to work with the County Administration and the District Attorney's Office to develop the City certification program, as described above. During the development of this program, the City will not modify its code enforcement program to enhance enforcement of group home zoning violations. The City's "complaint-based" enforcement process will remain in force, pending the completion of an agreement with the County. The implementation of this agreement will require Council approval of an ordinance and a contract for provision of services by the County.

The implementation of the City certification program will include an outreach effort to notify all known Residential Service Facilities of the certification requirement.

CONCLUSIONS

Staff believes that this ordinance is important to ensure even handed and effective enforcement of the Zoning Code. We are no longer recommending the Referral Facility category because as a practical matter the concerns are better addressed through careful licensing now provided to most such facilities by the County. The proposed City certification program will apply the same service and facility standards to all such facilities in the City.

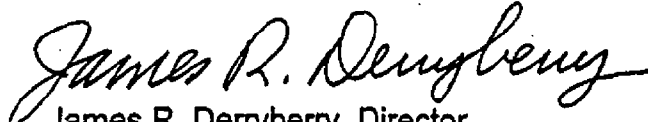
The clearer definitions will facilitate code enforcement efforts. The Reasonable Accommodation process will go a long way in assuring that facilities which provide services will be dealt with in a fair and even handed manner.

COORDINATION

Preparation of this report was coordinated with the City Attorney's Office.

COST IMPLICATIONS

The costs to establish the City certification program, including contracting with the County, developing outreach activities, and processing permits and reasonable accommodation requests resulting from the certification program will be included in the report to the City Council on the City certification program and addressed as part of the annual budget.


James R. Derryberry, Director
Planning, Building and Code Enforcement

Attach. Background Report on the Group Home Ordinance